



City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

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STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
CITY OF SAN JOSÉ

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 29730**, the original copy of which is attached hereto, was passed for publication of title on the **10th day of May 2016**, was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **May 17, 2016**, by the following vote:

AYES: CARRASCO, HERRERA, JONES, KALRA, KHAMIS, M. NGUYEN,
T. NGUYEN, OLIVERIO, PERALEZ, ROCHA; LICCARDO.

NOES: NONE.

ABSENT: NONE.

ABSTAINED: NONE.

Said ordinance is effective as of **June 17, 2016**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **19th day of May 2016**.

(SEAL)

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

ORDINANCE NO. 29730

**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING
PART 8 TO CHAPTER 17.23 OF TITLE 17 OF THE SAN
JOSE MUNICIPAL CODE TO PROVIDE AN INTERIM
REDUCTION IN CERTAIN RENT INCREASES AND A
PAUSE IN FILINGS FOR PASS THROUGH PETITIONS**

WHEREAS, since 1979, the City of San José ("City") has had a rent stabilization ordinance known as San José rental dispute mediation and arbitration ordinance which is currently located in Chapter 17.23 of the City of San José Municipal Code (the "Apartment Rent Ordinance") and is applicable to rental units as defined therein that were first rented before September 7, 1979; and

WHEREAS, the Apartment Rent Ordinance applies to approximately 44,300 apartments ("ARO apartments"), comprising roughly one-third of the City's rental housing stock and housing approximately 11 percent of San José residents; and

WHEREAS, the City of San José has been experiencing a severe housing affordability crisis, and San José is one of the most expensive cities in the country in which to live, and San José has one of the highest rates of rent increases in the country; and

WHEREAS, in March 2016 the median rental price for a one-bedroom apartment in San Jose was \$2,244 per month (\$26,928 per year), a 9 percent increase in costs over March 2015, and the median rental price for a two-bedroom apartment was \$2,792 per month (\$33,504 per year), a 7.3 percent increase over costs in March 2015; and

WHEREAS, the March 2016 report written by Economic Roundtable found that rents in ARO apartments rose faster than market-rate rents (111% increase versus 105% increase, respectively) on both a real and absolute basis during the time period from 1990 to 2014; and

WHEREAS, in 2014 the estimated annual median household income for households that rented ARO apartments in San Jose was \$39,000; and

WHEREAS, the affordable rent, defined as spending no more than thirty percent of income on housing, for a family earning \$39,000 is approximately \$975 per month; and

WHEREAS, real (inflation-adjusted) rents for ARO apartments have increased between 1990 and 2014 while real (inflation-adjusted) incomes for ARO renters have decreased during the same time period; and

WHEREAS, in 2014 the median rent for an ARO apartments was approximately \$1,308, which is affordable to households with annual incomes of \$52,320 or more; and

WHEREAS, on April 19, 2016 the City Council has directed the City Administration to bring back amendments to the Apartment Rent Ordinance to reduce the annual allowable annual rent increase from 8% to 5%, to eliminate the pass through of increased debt service costs, to create a registry for tracking rent levels to facilitate enforcement and to make other changes; and

WHEREAS, completing and adopting the amendments to the Apartment Rent Ordinance and establishing the registry will take several months; and

WHEREAS, since April 19, 2016 the City Administration has received reports of maximum 8% increase notices, and also some reports of rent spiking through unpermitted rent increases; and

WHEREAS, without action by the City to adopt interim limits many tenants may be displaced by these rent increases; and

WHEREAS, displacement through evictions and significant rent increases destabilize the living situations of renters in ARO apartments, has a direct impact on the health of

San Jose's citizens by uprooting children from their schools, disrupts social ties and networks that are integral to citizens' welfare and the stability of communities, and creates undue hardship for low-income residents through additional relocation costs, stress and anxiety, and the threat of homelessness due to lack of alternative housing options; and

WHEREAS, an Interim Ordinance establishing the deadline for petitions and increases under the existing Apartment Rent Ordinance is also needed to facilitate establishment of new procedures; and

WHEREAS, the provisions of this Ordinance have been analyzed and found to be exempt under the California Environmental Quality Act of 1970 ("CEQA"), together with regulations and guidelines promulgated thereunder (including without limitation Section 15301 of the CEQA Guidelines), pursuant to the following, each a separate and independent basis: CEQA Guidelines Section 15378 (not a project) and CEQA Guidelines Section 15061(b)(3) (no significant impact on the environment); and

WHEREAS, the City Council of the City of San José ("City") is the decision-making body for this proposed Ordinance; and

WHEREAS, the City Council has read, considered and approves said exemption prior to taking any approval actions on this proposed Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1.

The City Council finds that the foregoing recitals are true and correct and incorporates them into this Ordinance.

SECTION 2.

Chapter 17.23 of Title 17 of the San José Municipal Code is hereby amended by adding a new Part to be numbered and entitled and to read as follows:

Part 8 INTERIM REGULATION OF RENT INCREASES

17.23.800 – Interim Limit on Rent Increases.

Notwithstanding Section 17.23.180 and Section 17.23.210 of Chapter 17.23, Title 17:

- (a) No increase or combination of increases to the rent charged to a tenant of a rental unit may exceed 5%, subject to Section 17.23.810; and
- (b) Rent may not be increased more than once in any twelve-month period; and
- (c) A landlord must invoke the hearing process referred to in Section 17.23.230 in order to seek any increase in excess of the 5% increase allowed without review pursuant to Section 17.23.800.
- (d) A landlord may set the initial rent for a new tenant immediately after a vacancy occurring pursuant to Section 17.23.190.B.

17.23.810 –Deadline for Petitions and Awards; Limit on Awards.

- (a) No landlord may petition for a rent increase due to debt service costs or for other pass-through costs listed in Section 17.23.440 after September 1, 2016.
- (b) Notwithstanding Section 17.23.440.A.3, any award for a petition filed for an increase listed under Section 17.23.440.A after the effective date of this Ordinance shall not include any increase in excess of approved reasonable pass-through costs plus no more than two percent (2%) of the monthly rent.

17.23.820 – Fair Return after September 1.

- (a) After September 1, 2016, a landlord may petition for a rent increase in excess of the 5% increase allowed pursuant to Section 17.23.800 by invoking the hearing process referred to in Section 17.23.230 in order to seek a fair return as described in this section. An “arbitration” hearing will be held for a fair return petition, and tenants may

file service reduction petitions. A fair return petition will be filed on a City approved form and must include copies of all documents and information on which the landlord relies to establish that the base year net operating income was unusually low. Department staff will review the petition submittal for completeness, and respond to the landlord within 10 business days with a list of additional documents or information required. If the landlord declares under penalty of perjury that the information or documents are not available to the landlord, Department staff shall proceed with scheduling the hearing. The hearing officer may require additional documentation. The burden of proof is on the landlord to show that the base year net operating income did not provide a fair return.

(b) For the purposes of determining the rent increase necessary to provide the landlord with a fair return, it shall be presumed that the net operating income (determined by subtracting the actual reasonable operating expenses from the gross income), received by the landlord in 2014 (the "base year"), provided the landlord with a fair return.

1. A fair return is that amount required for the landlord to maintain the base year net operating income adjusted for inflation.
2. The adjustment for inflation shall be sum of a percentage of the annual increases to the Consumer Price Index, San Francisco Bay Area-All Urban Consumers for the petition period, prorated as needed. The applicable percentage of the Consumer Price Index is 100%.
3. The petition period shall be the period between January, 2014 and the filing date of the landlord petition.

(c) The presumption that the landlord received a fair return in the base year based on reasonable expenses may be overcome by sufficient evidence showing that income or expenses were unusually high or low for that building or complex in the base year as described in this Section. The hearing officer may adjust the base year net operating income if the hearing officer finds:

1. The landlord's operating expenses in the base year were unusually high or low in comparison to other years due to unusual circumstances. In such instances, adjustments may be made in calculating operating expenses so the base year operating expenses reflect average expenses for the property over a reasonable period of time. The hearing officer shall consider the following factors

in making this finding: a. The landlord made substantial capital improvements that improved the housing services during the base year, which were not reflected in the base year rent levels; b. Substantial repairs were made due to damage caused by uninsured disaster or vandalism; c. Maintenance and repair were below accepted standards or resulted from the intentional deferral of other repairs or work, which deferral caused significant deterioration of housing services, the building or individual units. If the time since the deferred work was performed significantly exceeds the amortization periods established by the regulations, it shall be presumed that it was intentionally deferred; and d. Other expenses were unreasonably high or low, notwithstanding prudent business practice.

2. The landlord's gross income during the base year was disproportionate. In such instances, adjustments may be made in calculating gross income consistent with the purposes of this chapter. The hearing officer shall consider the following two factors in making this finding: a. The gross income during the base year was unusually low because some residents had unusually low rents for the quality, location, age, amenities and condition of the housing. Rent less than 75% of 2014 fair market rent as determined by the U.S. Department of Housing and Urban Development for the San Jose Sunnyvale Santa Clara metropolitan area can be considered unusually low for units in buildings without housing code violations; and b. The gross income during the base year was significantly lower than normal because of destruction of all or part of the premises and/or temporary eviction for construction or repairs.

(d) In determining the rent increase required to provide the landlord with a fair return, the administrative hearing officer shall determine:

1. The fair return in accordance with Section 17.23.820(b).
2. The gross income required to produce the fair return.
3. The rent increase needed to produce the required gross income.

(e) For the purposes of determining the net operating income, operating expenses shall include the following expenses in connection with the operation of the rental units:

1. Annual fees assessed under Chapter 17.23 to the extent that they cannot be passed through to tenants under Chapter 17.23;
2. Business license fees, real property taxes, utility costs, insurance;
3. Normal and reasonable repair and maintenance expenses for a rental unit and the buildings or complex of buildings of which it is a part together with common areas, which expenses shall include, but not be limited to, building maintenance including carpentry, painting, plumbing and electrical work, supplies, equipment, refuse removal, and security services or systems, cleaning, fumigation, landscaping, and repair or replacement of furnished appliances, drapes, and carpets.
4. Reasonable management expenses (contracted or owner performed), including necessary and reasonable advertising, accounting, other managerial expense. Management expenses are presumed to be six percent of gross income, unless established otherwise. Management expenses in excess of eight percent of gross income are presumed to be unreasonable and shall not be allowed unless it is established that such expenses do not exceed those ordinarily charged by commercial management firms for similar residential properties;
5. Attorney's fees and costs incurred in connection with successful good faith attempts to recover rents owing and successful good faith unlawful detainer actions not in violation of applicable law, to the extent the same are not recovered from tenants; and legal expenses of a nature are necessarily incurred in dealings with respect to the normal operation of the rental units, building or complex to the extent such expenses are not recovered from adverse or other parties. If, on the basis of substantial evidence, it is determined that these expenses will not reoccur annually, the hearing officer may amortize those expenses over a period of five (5) years;
6. Capital improvements and replacement of facilities, materials or equipment necessary to maintain the same level of services as previously provided, except to the extent such costs are compensated by insurance proceeds or other

sources, and subject to the condition that said expenses shall be amortized in accordance with the standards for capital improvements in the regulations.

(f) For the purposes of determining the net operating income, operating expenses shall not include:

1. Avoidable and unnecessary expense increases since the base year including maintenance and repair work which resulted from the intentional deferral of other repairs or work, which deferral caused significant deterioration of housing services, the building or individual units;
2. Debt Service, including mortgage interest and principal payments;
3. Fees, other than fees expressly authorized by subsection (e) of this Section;
4. Penalties, fees or interest awarded for violation of this Chapter or any other law;
5. Legal expenses, except as authorized by subsection (e) of this Section including attorneys' fees and costs, incurred in relation to administrative or judicial proceedings in connection with this chapter and legal expenses, where the pass-through of the expenses would constitute a violation of public policy;
6. Depreciation of the rental unit or rental units.
7. Any expenses for which the landlord has been reimbursed by any utility rebate or discount, security deposit, insurance settlement, judgment for damages, settlement or any other method or device.

(g) For the purposes of determining the net operating income, gross income shall be the sum of the following:

1. Gross rents, calculated on the basis of one hundred percent occupancy, adjusted for uncollected rents due to vacancy and bad debts to the extent such are reasonable and beyond the control of the landlord;
2. Income from laundry facilities, garage or parking fees, or other services, if not included in rent; and
3. Costs of (or related) to utilities paid directly to the landlord by the tenants, if not included in rent; and
4. Interest from security and cleaning deposits (except to the extent paid to tenants); and

5. All other income or consideration received or receivable in connection with the use or occupancy of the rental unit

(h) The hearing officer's decision shall include a determination in accordance with the provisions of this Part of the amount of the rent increase, if any, which is required to provide the landlord with a fair return. The hearing officer's allowance or disallowance of any proposed rent increase or portion thereof may be reasonably conditioned in any manner necessary to effectuate the purposes of this Chapter.

17.23.830 – Landlords to Retain 2014 Records. Landlords are required to keep all financial records for 2014 which may be necessary for making a net operating income determination. Failure to retain such records may result in the loss of the ability to demonstrate the need for a fair return rent increase after September 1, 2016.

17.23.840 – No Waiver.

The provisions of this Part may not be waived, and any term of any lease, contract, or other agreement which purports to waive or limit a tenant's substantive or procedural rights under this ordinance are contrary to public policy, unenforceable, and void.

17.23.850 - Termination of Interim Regulation.

The provisions of this Part will terminate on the earlier of: sixty days after the effective date of an ordinance amending Chapter 17.23 to decrease the annual allowable rent increase to five percent (5%), revise the cost pass through process and require registration of rents or units or January 1, 2017.

SECTION 4. If any provision of this Ordinance or application thereof is held to be invalid, this invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provisions or applications, and to this end the provisions and applications of this Ordinance are severable.

PASSED FOR PUBLICATION OF TITLE this 10th day of May, 2016, by the following vote:

AYES: CARRASCO, HERRERA, JONES, KALRA, KHAMIS,
T. NGUYEN, PERALEZ, ROCHA; LICCARDO.

NOES: M. NGUYEN, OLIVERIO.

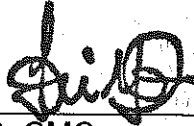
ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI TABER, CMC
City Clerk